

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
CITY OF ALMATY, KAZAKHSTAN et al, : Docket #1:19-cv-02645-  
Plaintiffs, : AJN-KHP  
- against - :  
SATER, et al, : New York, New York  
March 24, 2022  
Defendants. :  
----- : DISCOVERY CONFERENCE

PROCEEDINGS BEFORE  
THE HONORABLE JUDGE KATHARINE H. PARKER,  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 THE CLERK: Calling case 19-civil-2645, City of  
3 Almaty, Kazakhstan vs. Sater.

4 Beginning with counsel for the plaintiffs, please  
5 make your appearance for the record?

6 MR. CRAIG WENNER: Your Honor, Craig Wenner and my  
7 colleague, Sabina Mariella from Boies Schiller Flexner for  
8 plaintiffs, City of Almaty and BTA Bank.

9 THE HONORABLE KATHARINE H. PARKER (THE COURT):  
10 Nice to see you.

11 THE CLERK: And counsel for the defendants, please  
12 make your appearance for the record.

13 MR. JOHN SNYDER: Hi, your Honor; John Snyder,  
14 John H. Snyder PLLC, counsel for the Sater defendants and  
15 Felix Sater.

16 MR. THOMAS C. SIMA: Tom Sima, Law Firm of Thomas C.  
17 Sima, counsel for the Sater defendants and Felix Sater.

18 THE COURT: Okay.

19 M. CYRULNIK: Good afternoon, your Honor. Jason  
20 Cyrulnik from Cyrulnik Fattaruso. I'm here on behalf of MeM  
21 Energy. I don't think we have anything in particular today,  
22 so I'm sitting over here to make sure that counsel has the  
23 table that's --

24 THE COURT: Okay. We do have some discovery to  
25 talk about. But welcome, everyone.

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2           I wanted to first hear argument on the proposed  
3 motion to amend and the counterclaim. Since it is defendant  
4 Sater et al's motion, tell me why you meet the Rule 16  
5 standard for amending and why this should be permitted?

6           MR. SNYDER: Sure, your Honor. So, your Honor,  
7 Felix Sater, as you're well aware, was sued in this action in  
8 March of 2019. And for the next two years, he was under the  
9 belief that it was a garden-variety commercial case. In  
10 January 2021, the FBI --

11           THE COURT: But this is not -- this case is not a  
12 commercial case; it relates to Sater's alleged assistance in  
13 laundering money. Is that --

14           MR. SNYDER: I guess I was thinking of --

15           THE COURT: -- are you characterizing that as a  
16 commercial transaction?

17           MR. SNYDER: Well, I mean, there are commercial  
18 transactions in it, but the point being, your Honor, is in  
19 January 2021, he found out for the first time and had no  
20 way to know before that, that Arcanum had been collecting  
21 information on him and giving it to Christopher Steele to  
22 be used in an effort to get Felix charged with RICO.

23           THE COURT: But Arcanum's not even in this case.

24           MR. SNYDER: Arcanum's is the Kazakh's -- well,  
25 we're trying to implead them, your Honor.

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2 THE COURT: I understand.

3 MR. SNYDER: And Arcanum is involved in the other  
4 case, the arbitration. They were a party to the CAA, the  
5 Confidential Assistance Agreement that your Honor's very  
6 well familiar with.

7 THE COURT: Yes.

8 MR. SNYDER: And they're certainly part of the  
9 overall story. Mr. Sater didn't bring this earlier because  
10 he didn't know at the time even that it was a possibility  
11 that Arcanum was going behind his back and trying to get  
12 him charged with a crime. It's not something that you  
13 would normally assume would happen, but apparently it did  
14 happen. So Mr. Sater would like -- and, by the way, the  
15 knowledge of Kazakhstan, of Almaty, of BTA, their knowledge  
16 of Felix, their knowledge of the Confidential Assistance  
17 Agreement is central to this case because we're going to  
18 rely upon release and the validity of the release. Now, if  
19 the Kazakhs knew all about the CAA and knew all --

20 THE COURT: But I don't understand what you just  
21 said about the release. How is that relevant to the  
22 counterclaims that you're proposing?

23 MR. SNYDER: The counterclaim -- well, it's the  
24 same operative facts. In other words, if the Kazakhs and  
25 if Arcanum not only knew about Felix, but, you know, had

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2 done this in-depth investigation into him sufficient to try  
3 to get him charged with RICO, then that would, just as we  
4 saw in previous opinions that your Honor has issued, the  
5 knowledge -- their knowledge of the CAA and their knowledge  
6 of Felix and his involvement is pivotal to both, you know,  
7 the claims that we're trying to affirmatively assert as  
8 well as the affirmative defenses of, among others, release.

9                   THE COURT: Okay. So tell me what facts are  
10 overlapping between your claims and the claims that  
11 currently exist, which involve evaluation of real estate  
12 transactions and evaluation of the companies that entered  
13 into those transactions and the sources of their funds.

14                   MR. SNYDER: Okay, so, your Honor, in June 2015,  
15 the CAA was signed. The CAA contains a -- on its face -- I  
16 think your Honor characterized it as a very broad release.  
17 Now, if that release stands, if that's that as against BTA  
18 and as against Almaty, then whatever claims they may have  
19 against Felix or may have had are gone because they've been  
20 released, and they lose.

21                   THE COURT: Okay.

22                   MR. SNYDER: So that is -- so the facts and  
23 circumstances that will prove that are the very same facts  
24 and circumstances, your Honor, that we will be looking into  
25 and attempting to establish with our new counterclaims.

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2                   THE COURT: Isn't the question of the scope of the  
3 release a legal question?

4                   MR. SNYDER: It's a mixed question of fact and  
5 law, as I understand it, your Honor, because of course, you  
6 know, on its face it says that BTA and Almaty hereby  
7 release all the owners of Litco -- and Felix Sater is an  
8 owner of Litco. So on its face, he's released. Now, they  
9 say we didn't know about it, they say Felix didn't tell us  
10 that he was the owner of Litco, a bunch of reasons why  
11 maybe it isn't enforceable. But that that, at the end of  
12 the day, as I see it, it's a question of law, but it's also  
13 a question of fact as to whether the release is  
14 enforceable.

15                  THE COURT: Okay. But the facts related to the  
16 release seem separate from the facts that you're asserting  
17 in your proposed counterclaim that have to do with  
18 international espionage.

19                  MR. SNYDER: So, your Honor, if, for example,  
20 let's say we go forward with these claims, we serve a  
21 subpoena on Arcanum for the PowerPoint presentation as well  
22 as all communications discussing the PowerPoint  
23 presentation, and we get back a big, thick binder of  
24 everything about Felix and emails telling the Kazakhs all  
25 about Felix, well, at that point, Judge, I think you would

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2 say, well, you know what, Almaty and BTA very well did know  
3 about Felix, and therefore, I'm not going to let them out  
4 of that release. So, you know, they both spring, I think,  
5 from the same operative set of facts of what did the  
6 Kazakhs know about Felix.

7 THE COURT: But isn't there another agreement that  
8 prevented Arcanum from informing anybody at Kazakhstan and  
9 BTA Bank about the agreement? Mr. Sater testified in this  
10 court that he wanted to keep his affiliation with Litco  
11 secret from Kazakhstan, from BTA, and that's why he set it  
12 up the way he did.

13 MR. SNYDER: Well, it doesn't mean it didn't  
14 happen, your Honor. You know, we also didn't know that  
15 Arcanum was gathering information and sending it to  
16 Christopher Steele. That was a bit of a surprise to us.  
17 So knowing that, if they also disclosed it to the Kazakhs,  
18 would that make anybody fall out of their chair? I don't  
19 think so.

20 THE COURT: Okay. You have an address. Why under  
21 Rule 16 there's good cause to allow the amendments at this  
22 point in time when discovery is supposed to be completed,  
23 nearly complete.

24 MR. SNYDER: Well, your Honor, as your Honor  
25 knows, we did attempt to mediate this case and settle the

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2 case. I think we went about it, you know, the best way we  
3 knew how. In terms of Rule 16, you know, there is still  
4 discovery yet to be done on both sides. I don't see any  
5 particular prejudice to anybody given the fact that, again,  
6 the question of the plaintiff's knowledge about Felix, his  
7 ownership, etc. It's pivotal to the case that's already  
8 existing here, so there's no prejudice. And, you know, in  
9 terms of the nexus between the claims, you know, your  
10 Honor, I think I've already addressed that part of it, and  
11 I don't want to beat a dead horse.

12 THE COURT: Well, am I correct, though, that  
13 Mr. Sater learned about this FBI report a year ago?

14 MR. SNYDER: Well, he -- you know, less than a  
15 year ago -- well, maybe a year now. And then, so when he  
16 learned that, he engaged counsel that was experienced with  
17 Kazakhstan. There was outreach to them. They wanted to  
18 discuss settlement. You know, with these kind of things  
19 and with Kazakhstan being sort of -- you know, they don't  
20 move quickly, so it did take some time. They wanted --  
21 they wanted -- Kazakhstan wanted to have a retired federal  
22 judge mediate, so we had to go find a retired federal  
23 judge. That took a little bit of time. And then we  
24 mediated in December. Things were going pretty well, and  
25 then in early January, everything blew up in Kazakhstan,

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2 and discussions ended, and now here we are.

3                   So, you know, ordinarily do you try to run to  
4 court the minute you get a claim? You try to; but, in this  
5 case, given the subject matter of it, given our knowledge  
6 of at least at the time people in Kazakhstan, we wanted to  
7 give every opportunity to settle the case before making  
8 allegations. And so that's why it took the time it took,  
9 your Honor.

10

THE COURT: And are you involved in the  
11 arbitration that's pending concerning the validity of the  
12 Litco agreement?

13

MR. SNYDER: Yes, your Honor.

14

THE COURT: And in that arbitration, I assume  
15 there is discovery about the origins of the CAA and the  
16 relationship, is there not?

17

MR. SNYDER: There was the beginnings of it, your  
18 Honor. The arbitration has been stayed as of now because  
19 Felix didn't have the money to pay the arbitration bill,  
20 and he's working to rectify that. But that's the status of  
21 the arbitration right now.

22

THE COURT: Okay. And the defendants raised the  
23 issue about the Foreign Sovereign Immunities Act. Why is  
24 that not applicable, at least to Almaty and the country of  
25 Kazakhstan?

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2                   MR. SNYDER: So, my understanding -- and as I said  
3 in the brief -- Kazakhstan's --the sovereign immunity is  
4 only for acts that are unique to a sovereign. Right? And  
5 so there was a famous case where in Saudi Arabia they  
6 supposedly imprisoned people to put leverage on them for  
7 business. And they said, okay, that is sovereign immunity  
8 because only countries can put people in jail, only  
9 governments can put people in jail; whereas, if you're a  
10 country and you get in default on your bond offering,  
11 you're treated just like anybody else. That's commercial,  
12 and you are not covered by sovereign immunity. Now, what's  
13 being alleged here is making false statements about  
14 somebody. Right? And anybody can do that. There's  
15 nothing unique to a sovereign about that. And so sovereign  
16 immunity should not apply.

17                  THE COURT: But that's not a commercial activity.

18                  MR. SNYDER: I mean, they hired a consultant or an  
19 investigation firm, Arcanum. Arcanum went and did  
20 intelligence on Felix, apparently, was paid for it. I  
21 mean, that's --

22                  THE COURT: Isn't a foreign state conducting  
23 surveillance on an individual for political reasons, which  
24 is what you allege, something that's solely the province of  
25 the state?

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2                   MR. SNYDER: Not at all. I can -- if I had enough  
3 money, I could hire Arcanum to go conduct surveillance on  
4 anybody. I don't have to be a government to do that.

5                   THE COURT: So you don't believe there's a  
6 difference between hiring a PI in a commercial dispute  
7 versus hiring an investigator for political spying?

8                   MR. SNYDER: Well, my understanding is the  
9 difference between a PI and an intelligence firm is the  
10 size of the retainer check. They essentially do the same  
11 thing. And there's not --

12                  THE COURT: But my question pertains to the  
13 purpose of it. You allege that this case is about a plot  
14 by the Kazakhstan KBG to interfere in an election. How is  
15 that anything like hiring a personal -- an investigative  
16 firm to evaluate whether somebody is cheating on, you know,  
17 a spouse or cheating on workers' comp or disability or any  
18 of the other reasons why somebody might hire a personal  
19 investigator?

20                  MR. SNYDER: All sorts of people wanted to hurt  
21 Trump politically for good reasons and bad reasons, and  
22 there's nothing unique about, you know, a Kazakh party  
23 doing it versus anybody else other than perhaps there may  
24 be some laws against that. But in terms of its essential  
25 nature, they're digging up dirt on somebody to hurt

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2 somebody politically. There's absolutely nothing that says  
3 a country -- you have to be a country to do that.

4 THE COURT: And can you please address why you  
5 believe joinder is proper under Rule 20?

6 MR. SNYDER: Well, for largely the same reasons  
7 that it's a -- you know, it's a compulsory counterclaim  
8 because it arises from the very same -- here, let me just  
9 get to this, your Honor. I want to look for this specific  
10 thing here. All right. The standard, your Honor -- and  
11 this is 20(a)(2) -- "Persons may be joined in one action if  
12 any right of relief is asserted against them jointly,  
13 severally or in the alternative, and any question of fact  
14 or law common to all defendants will arise in the action.

15 Now, in terms of the same transactions or  
16 occurrence, your Honor, the facts underlying his  
17 counterclaims, i.e., the knowledge that was collected by  
18 agents of the Kazakh parties, is the same facts and  
19 circumstances that are going to be adjudicated in terms of,  
20 among other things, the validity of the release.

21 In addition, we also have an unclean hands  
22 defense. And to the extent that they were doing things in  
23 connection with this that were dishonest -- and it sure  
24 seems like they were -- that would be relevant to those, as  
25 well. So it's the same transactions and occurrences.

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2                   In terms of questions of fact or law overlapping,  
3 again, is the CAA valid if it is the release in the CAA  
4 valid? If the Kazakh parties knew all about Felix and knew  
5 all about who he was and what he was and nevertheless  
6 signed the agreement and nevertheless let him work for  
7 them, then your Honor may actually look at that and say,  
8 you know what, they have unclean hands, I'm not going to  
9 let them walk away, or I'm certainly not going to let them  
10 assert these claims against Felix. So it's the same  
11 transactions or occurrences, and there are combinations of  
12 fact and law, so it's proper under Rule 20.

13                  THE COURT: All right, are there any other  
14 arguments you'd like to make with respect to your motion?

15                  MR. SNYDER: Just, your Honor, that I am at a bit  
16 of a disadvantage because you've lived this case, they've  
17 lived this case; I'm new. So I'm doing the very best I  
18 can. I read very carefully the transcript of the sanctions  
19 hearing in which, you know, knowledge of who Felix was and  
20 what he did was at the center of everything. I don't have  
21 to tell you about it. To me, if I were your Honor, I would  
22 be pretty intrigued by this, and I would wonder how come  
23 I've never heard of this big investigation into Felix,  
24 given the fact that I just held a very long evidentiary  
25 hearing where what people knew about Felix was at the

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2 center of everything. So if we're going to litigate this,  
3 if we're going to find out what happened, let's get all the  
4 facts on the table and find out what really happened. So  
5 that's my plea here, your Honor. And I'll sit down now.

6 THE COURT: Okay. Thank you.

7 I'll hear next from plaintiffs.

8 MR. WENNER: Your Honor, with the Court's  
9 permission, our associate, Ms. Mariella will argue?

10 THE COURT: Sure.

11 MS. SABINA MARIELLA: Thank you, your Honor. Good  
12 afternoon.

13 I'd like to start just by giving an overview of  
14 why we oppose the motion, and then I'll address some of the  
15 points that Mr. Snyder made specifically and then make  
16 myself available for any questions that the Court might  
17 have. And just let me know if you can hear me sufficiently  
18 from here.

19 THE COURT: I can. Thank you.

20 MS. MARIELLA: Okay. As you heard, Mr. Snyder has  
21 explained Mr. Sater's proposed counterclaims in this case  
22 essentially contend that BTA, Almaty, Kazakhstan and  
23 Arcanum engaged Litco under a Confidential Assistance  
24 Agreement in order to collect intel on Sater in order to  
25 harm Donald Trump's Presidential campaign. This theory is

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2 totally contrary to known and public facts. And I won't go  
3 through them all, because there's a lot, but I'll just  
4 highlight a couple for the Court.

5 First, Donald Trump announced his Presidential  
6 candidacy after the CAA was signed. So the theory that the  
7 plaintiffs engaged Litco in the CAA to collect intel to  
8 harm his campaign is simply not plausible. Second, Litco,  
9 as you heard during the hearing on the sanctions motion,  
10 was the one who approached the plaintiffs to assist with  
11 the plaintiffs' asset recovery efforts, not the other way  
12 around. And, third, as this Court has already found after  
13 the sanctions hearing, the plaintiffs and their attorneys  
14 did not know that Sater was affiliated with Litco. So the  
15 theory that they entered into this agreement with Litco  
16 with the intent of gaining intelligence on Mr. Sater to  
17 harm a Presidential campaign is simply not plausible.

18 The only evidence that supports these proposed  
19 counterclaims is a record of an FBI interview. And this  
20 FBI interview does not mention any of the proposed  
21 counterclaim defendants except for Arcanum, and all it says  
22 about Arcanum is that Mr. Steele had a PowerPoint from  
23 Arcanum about the Sater connection to Ablyasov, which is  
24 true and which Mr. Sater has testified about.

25

As we explain in our brief, aside from these

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2 factual -- these implausible facts, Mr. Sater's various  
3 claims are also legally deficient for many reasons and  
4 would immediately fall apart on a motion to dismiss. But  
5 that's all laid out in our brief; I won't regurgitate all  
6 of that for you today. Putting the factual implausibility  
7 and the legal infirmity of the claims aside, this case is  
8 not about anything that Mr. Sater has raised in his  
9 proposed counterclaims. This case is about Mr. Sater's  
10 role in assisting Mukhtar Ablyasov and Ilyas Khrapunov in  
11 carrying out a complex international money-laundering  
12 scheme from about 2005 to 2013, well before this agreement  
13 was ever signed.

14                 The parties have been litigating that issue for  
15 three years. The parties have been conducting voluminous  
16 discovery on those facts for three years. There's a  
17 scheduling order in place that the parties and the Court  
18 have been relying on to manage this litigation; yet, just  
19 last month Sater raised with the Court for the first time  
20 his intent to raise this counterclaims that have absolutely  
21 nothing to do with the plaintiffs' claims, that add two  
22 brand-new parties who have had no involvement with this  
23 litigation for three years, and who have not participated  
24 in discovery at all.

25

               If these were real claims that were grounded in

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2 law or reality, Mr. Sater could have tried to bring them in  
3 the pending arbitration between Litco and Arcanum, he could  
4 have brought a new action based on them; instead, he's  
5 trying to use this court as a forum to start an entirely  
6 new case about a conspiracy theory about election  
7 interference. Why? Because Mr. Sater wanted a platform to  
8 try to publicly embarrass the plaintiffs to try to leverage  
9 a settlement with them.

10

Mr. Sater can't show good cause to do so, as he  
11 has to under Rule 161, and he hasn't given this Court any  
12 good reason to permit the kind of expansive discovery that  
13 would be required to litigate these counterclaims, nor has  
14 he given the Court any good reason to add two new parties  
15 who would essentially have to start anew in this case. And  
16 this is especially so in light of the fact that he had this  
17 information that he purports to base these counterclaims on  
18 for more than a year and still waited to raise this motion  
19 with the Court until now, on the eve of the close of fact  
20 discovery.

21

THE COURT: Can you address the discovery, if any,  
22 that Mr. Sater has taken on the release? He has an  
23 affirmative defense of release.

24

MS. MARIELLA: I would ask Mr. Wenner to speak to  
25 that, but I know that just recently he served his first

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2 discovery requests specifically on the counterclaims. And  
3 they're extremely broad. They would totally expand the  
4 scope of discovery in this case. He wants everything  
5 related to Litco, everything related to this agreement,  
6 documents --

7

THE COURT: Right. I understand that. But  
8 already existing in the case is Mr. Sater's defense that  
9 the claims against him are barred by a release that's  
10 contained in the Litco agreement. And so what facts, if  
11 any, do you think are relevant to that issue?

12

MS. MARIELLA: Well, the release -- so Mr. Sater  
13 is not a party to the agreement. So the legal issue there  
14 would be whether he is a third-party beneficiary to the  
15 agreement and would thus be -- I believe, your Honor, it  
16 would be based on whether the parties expressed a clear  
17 intent to release him, and then, of course, the language of  
18 the release and whether it even applies to these claims at  
19 all.

20

THE COURT: Right. So there would be factual  
21 issues about what the intent was in entering into that  
22 agreement that contained the release. So who would be the  
23 witnesses relevant for that?

24

MS. MARIELLA: Well, whoever signed the agreement  
25 for Litco and the --

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2                   THE COURT: So back to Mr. Kam, who no one has  
3 been able to find.

4                   MS. MARIELLA: Yes. We're working on it. So  
5 we're in the process of attempting to get Mr. Kam's  
6 deposition.

7                   And, you know, Mr. Sater has asserted that  
8 affirmative defense in early 2021. So it's not new. And  
9 if there was relevant discovery to his affirmative defense,  
10 he had the burden of finding it. And he's had plenty of  
11 time to do it, and I don't think asserting these proposed  
12 counterclaims and then requesting extra time in discovery  
13 based on them is an appropriate way to do it. And  
14 this -- you know, even if there are some minor overlapping  
15 factual issues, this Court still has discretion to not let  
16 him use the Court to essentially assert brand-new claims.

17                  And the standard for permitting joinder and  
18 whether there are overlapping issues of fact and law  
19 essentially relies on whether there's enough of a logical  
20 connection to make it make sense in terms of judicial  
21 economy to try all of the claims together.

22                  THE COURT: Has there been discovery in the  
23 arbitration concerning the agreement that contains the  
24 release or any testimony that can be shared in this case?

25                  MS. MARIELLA: I don't believe so, your Honor.

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2                   THE COURT: And the individual who entered on  
3 behalf of Arcanum is deceased, so Mr. Kam is the only one  
4 who actually was present, along with Mr. Wolf, is that  
5 right?

6                   MS. MARIELLA: I believe so, your Honor. I'd ask  
7 Mr. Wenner to correct me if I'm wrong about that.

8                   THE COURT: Okay.

9                   MR. WENNER: Yes, your Honor. That also assumes  
10 that Mr. Kam was the one who signed Mr. Kam's name on the  
11 documents here.

12                  THE COURT: He is --

13                  MR. WENNER: The only names --

14                  THE COURT: His name is the signatory --

15                  MR. WENNER: Yes.

16                  THE COURT: -- on the document.

17                  Okay. All right, can you talk about whether or  
18 not there are any exceptions to FISA that would apply that  
19 would permit jurisdiction, subject matter jurisdiction over  
20 Almaty and Kazakhstan for these proposed claims?

21                  MS. MARIELLA: Well, your Honor, so Mr. Sater has  
22 raised the exception based on commercial activity. And as  
23 you raised earlier, this is not a commercial transaction;  
24 this is not a case where a sovereign is engaging as a  
25 market player in a commercial transaction. They're not

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2 loaning someone money or taking out a loan. As Mr. Sater's  
3 own counterclaims contend, this is about political  
4 interference with an election. It is in no way commercial  
5 activity, and it just cannot fall under that exception to  
6 sovereign immunity under the plain text of the statute.

7 THE COURT: Are there any other exceptions that  
8 apply?

9 MS. MARIELLA: So under the statute it would  
10 be -- the only other exception that could apply -- so  
11 28 USC 1607 governs counterclaims, so when the foreign  
12 sovereign is the one to bring the claims. Of course,  
13 Mr. Sater hasn't raised this, but in that case, it would  
14 only be if the counterclaims arose out of the same  
15 occurrence or transaction, so a similar test to joinder and  
16 compulsory counterclaims. And then the other exception  
17 under that provision of the statute would just be that  
18 there's no immunity to the extent that the counterclaim  
19 doesn't seek relief exceeding an amount or differing in  
20 kind from that sought by the foreign state. So that's  
21 under 28 USC 1607.

22 THE COURT: Okay. Thank you.

23 And can you address Rule 20 joinder and why you  
24 think that rule is not satisfied?

25 MS. MARIELLA: Yes, your Honor. First of all, of

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2 course, even if Mr. Sater can meet the requirements of  
3 Rule 20, he still has to meet the requirement of Rule 16  
4 for good cause because it would require modification of the  
5 scheduling order that had a deadline for joining parties.  
6 But putting that aside and putting aside any of the  
7 prejudice that joining parties would cause, again, so the  
8 test is the proposed claims have to arise out of the same  
9 transaction or occurrence as the plaintiff's claims. And  
10 to determine that, the Court must assess the logical  
11 relationship between the claims and determine whether the  
12 essential facts of the various claims are so logically  
13 connected that considerations of judicial economy and  
14 fairness dictate that all of the issues be resolved in one  
15 lawsuit. So that's the test for the first prong of the  
16 rule.

17 As we've said, Mr. Sater's counterclaims are about  
18 Arcanum and the Kazakh party's using Felix Sater as a pawn  
19 for interference in the US election in 2016 and for  
20 damaging Donald Trump politically, while plaintiffs' claims  
21 are about international money-laundering schemes spanning  
22 from 2005 to 2013, well before this election or this  
23 agreement was entered into. While there may be some  
24 tangential facts that could be relevant to both cases, we  
25 don't think that dictates judicial economy requiring all of

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2 the claims to come into one lawsuit.

3 Mr. Snyder also said something about, you know,  
4 the validity of the CAA being relevant in both actions.  
5 I'm not sure that I see that, either. The validity of the  
6 CAA may be relevant to his affirmative defense to the  
7 plaintiffs' claims, but I don't see how the validity of the  
8 CAA is relevant at all to his counterclaims. If anything,  
9 he says that, you know, the plaintiffs breached some  
10 confidentiality agreement under that agreement, so if it's  
11 invalid, then his counterclaims would fail. So I don't see  
12 the logical connection there. He also mentioned well, if  
13 we get this PowerPoint, there might be something in there  
14 that shows that the plaintiffs knew that Sater was Litco at  
15 the time they entered into the agreement; but, of course,  
16 this Christopher Steele interview was in 2017, which was  
17 two years after the 2015 agreement was signed. So there's  
18 no real connection there. He also brought up unclean  
19 hands. The unclean hands defense would only bar the  
20 plaintiffs' recovery on their own claims if they had  
21 unclean hands as to the conduct for which they were suing.  
22 Unclean hands defense is not a catchall for if you've  
23 engaged in any misconduct, you can't recover. There has to  
24 be some connection to the plaintiffs' own claims and their  
25 own unclean hands as to those claims.

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2                   So that's my response to the connections that  
3 Mr. Snyder raised. And then, of course, he would also have  
4 to show common questions of law and fact. And, again, we  
5 would contend there are none.

6                   THE COURT: Okay. Thank you. Are there any other  
7 points you wanted to raise?

8                   MS. MARIELLA: Yes. I just wanted to briefly  
9 raise good cause and prejudice that Mr. Snyder argued a bit  
10 about before. You know, as I explained earlier, this case  
11 has been going on for three years, and the parties have  
12 been doing a lot of discovery. Mr. Sater says that he did  
13 not find -- he did not come to learn of the information on  
14 which he based his counterclaims on until January of 2021,  
15 but he doesn't explain why he still waited a year when  
16 discovery was rapidly coming to a close and when the  
17 parties were under the impression that we were all bound by  
18 a scheduling order and proceeding accordingly.

19                   THE COURT: Well, he says it's because of a  
20 mediation.

21                   MS. MARIELLA: Yes, your Honor. Parties mediate  
22 all the time, and it does not justify blowing deadlines.  
23 And there are some cases that we cited in our brief where  
24 courts have found that the fact that parties were engaging  
25 in settlement discussions wasn't enough to meet the

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2 good-cause requirement. Some Courts require mediation. It  
3 doesn't mean that, you know, you can sit on your rights  
4 when you've learned information that could, you know,  
5 require you to amend.

6           And then as to prejudice -- oh, and I also wanted  
7 to mention on that point, Mr. Sater's proposed counterclaim  
8 and his brief say that he actually was able to prepare a  
9 draft of these counterclaims in July of 2017. So even  
10 giving him the benefit of the doubt, you know, he still  
11 waited six months from even that point to raise with your  
12 Honor the prospect that he might need to modify the  
13 scheduling order and move for leave to amend, and that we  
14 also have cases in our brief where Courts have found that  
15 even that amount of time was too long and wasn't diligence  
16 under the good cause standard.

17           And then, as to prejudice, Mr. Snyder said that  
18 adding these counterclaims and these parties would not  
19 prejudice anyone. It's simply not true. Again, these  
20 counterclaims are totally unrelated to what the parties  
21 have been litigating for three years. It would expand the  
22 scope of discovery significantly. We just got his document  
23 requests, which want everything from documents about Hunter  
24 Biden, about Robert Mueller, everything about Litco and the  
25 CAA, everything about Arcanum. It is not a narrow issue;

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2 it would significantly open the door to huge amounts of  
3 discovery, foreign discovery, I'm nearly certain a good  
4 amount of litigation over these discovery requests with  
5 your Honor. So it's simply not true that there would be no  
6 prejudice by allowing him to open up discovery to these  
7 brand-new issues that have not really been relevant to the  
8 claims so far and discovery so far.

9

And that's not even to mention the prejudice to  
10 the two new parties, who have not had the benefit of  
11 participating in discovery for the past three years, have  
12 not been present at any of the nine depositions that we've  
13 already taken, and who would be, again, starting anew in  
14 this case.

15

THE COURT: Okay. Thank you.

16

MS. MARIELLA: You're welcome.

17

THE COURT: Mr. Snyder, are there any points you'd  
18 like to make in reply?

19

MR. SNYDER: Just very, very briefly, your Honor.

20

First, that she mentioned that the CAA was signed  
21 I think shortly before Trump announced in 2015 for  
22 President. Everybody in the world knew Trump was running  
23 for President. They were doing opposition research on him  
24 well before he announced. So that is not the kill shot  
25 that she might think it is.

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2                 In terms of talking about the breadth of the  
3 counterclaims and how broad the discovery's going to be and  
4 all the new issues, if you read their Complaint, their  
5 initial Complaint in this matter or the First Amended  
6 Complaint, it reads, you know, like a grand saga. The  
7 thing's, you know, very, very long, and it talks about all  
8 sorts of things. So, you know, this has never been, you  
9 know, a laser-focused case. It's a case that requires  
10 quite a bit of context; and, you know, there's nothing  
11 anybody could do about that. It's just the nature of the  
12 case.

13                 In terms of the release -- and, of course, the  
14 release and the validity of the release and whether it  
15 applies to Sater, you know, those are central. I just want  
16 to point one thing out. Have you ever seen a commercial  
17 engagement where the parties sign a release at the  
18 beginning of the relationship? It never happens. You  
19 know, when you're a lawyer, you don't get a release in your  
20 engagement letter for stuff you did in the past. So, you  
21 know, there was obviously, you know, an understanding that  
22 they wanted to put the past in the past. And so the  
23 release, the validity of it, it runs through this entire  
24 case whether the counterclaims are allowed or not.

25

               The last thing I want to say -- and this is about

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2 the sovereign immunity issue -- because your Honor has sort  
3 of lasered in on that. And I want to point out *Republic of*  
4 *Argentina v. Weltover*, 504 US 607; it's a 1992 case. And  
5 there was discussion of, well, you know, their intent was  
6 to harm the election, and that isn't commercial. Okay, I'm  
7 going to read the -- this is Supreme Court, US Supreme  
8 Court. It says, "We conclude that when a foreign  
9 government acts not as regulator of the market but in the  
10 manner of a private player within it, the foreign  
11 sovereign's actions are commercial within the meaning of  
12 the FSIA." And I'm going to skip a little bit -- and this  
13 is very, very important, Judge. It says, "The question is  
14 not whether the foreign government is acting with a profit  
15 motive -- that's not the question -- or instead with the  
16 aim of fulfilling uniquely sovereign objectives." And here  
17 comes the important part, Judge. "Rather, the issue is  
18 whether the particular actions that the foreign state  
19 performs, whatever the motive behind them, are the type of  
20 actions by which a private party engages in trade and  
21 traffic or commerce." So the motive behind the acts  
22 doesn't matter; it's the acts themselves. And here, hiring  
23 an investigation firm, that act, there's nothing uniquely  
24 governmental about that.

25

THE COURT: But the claims are defamation and

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2 other breach of fiduciary duty, and the claims are not  
3 hiring a private investigator. They relate to alleged  
4 defamation. How are you connecting the hiring a PI to --  
5 how are those -- how's that act supportive of the claim of  
6 defamation, for example?

7 MR. SNYDER: Well, I would come back and say that,  
8 you know, anybody with enough money that didn't want to see  
9 Trump elected could have hired Arcanum to gather dirt on  
10 anybody they wanted, and I'm sure did. You don't have to  
11 be a government to do that. And, you know, in terms of --  
12 and I did hear the -- and it's a good argument, saying,  
13 well, this involved an election, and elections are about  
14 governments, and therefore, this is sovereign immunity. AT  
15 the end of the day -- and the US Supreme Court has been  
16 very clear about this -- the motive doesn't matter. The  
17 question is are you doing things that only a government can  
18 do. And here, as evidenced by the fact that  
19 nongovernmental -- we're naming Arcanum as a defendant.  
20 They're not a government.

21 THE COURT: Okay.

22 MR. SNYDER: Thank you, your Honor.

23 THE COURT: Thank you. I'll take this under  
24 advisement.

25 I'd like to talk now about discovery because I

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2 received two letters, one from plaintiffs and one,  
3 Mr. Snyder, from you regarding items. In response, you're  
4 saying that you need an additional 90 days of discovery.  
5 What's plaintiffs' view on the additional time needed for  
6 the outstanding items?

7 MR. WENNER: Your Honor, I think in Mr. Snyder's  
8 letter he makes some representations about getting some  
9 responses back to us on outstanding items by April 30th.  
10 And I think, assuming that that date sticks and he's able  
11 to get us those responses, which we expect will be  
12 challenging to some degree, our discovery is largely  
13 already our on the table, and we're waiting to bring that  
14 material back in.

15 THE COURT: Right.

16 MR. WENNER: And I think the 90 days is okay with  
17 us in that regard. There is an important distinction,  
18 though -- and it's an issue that came up in argument.  
19 Extending that discovery by 90 days, in our view, is not  
20 something that's anticipating discovery into the  
21 counterclaims. We received two days ago, two days before  
22 the close of fact discovery, document demands, the first  
23 deposition notices from the Sater defendants, the first  
24 interrogatories. And these are the document demands that  
25 Ms. Mariella referenced that include references to Hillary

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2 Clinton or, you know, all communications between Kenes  
3 Rakishev and Hunter Biden or all documents that refer to  
4 Fusion GPS. I mean, they're clearly about the  
5 counterclaims. So we don't want to put ourselves in the  
6 position of having to prepare responses and collect that  
7 discovery and do that work while we have this pending  
8 motion, and we would just hope and ask the Court that as  
9 quickly as that motion can be resolved, it will help us  
10 determine whether those are actually properly part of the  
11 case and whether we actually need to do the work to respond  
12 to them. So extending 90 days to finish what we have, to  
13 finish out the discovery on the claims that are part of the  
14 case now, I think we're okay with, assuming we get the  
15 responses that (indiscernible) that was asked for. But we  
16 don't want that to be a signal that we think this is a  
17 proper extension to include discovery of the counterclaims  
18 and that it can be done within that time.

19 THE COURT: Well, in terms of the timing of this  
20 and the motion to dismiss that you filed with respect to  
21 MeM that has been referred to me for resolution, I just  
22 note that Judge Nathan was voted on last night. So she is  
23 going up to the Second Circuit, and she is not going to be  
24 the district judge on the matter as soon as that happens,  
25 which I expect it will be shortly. So I don't know who the

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2 judge will be. The parties have the option to consent to  
3 my jurisdiction just for single motions. If you want to do  
4 that, you can. You don't have to make a decision today.  
5 But I would ask that, if you are going to consent for  
6 purposes of either of these motions, that you submit a  
7 notice form within the next week. And, again, I have no  
8 idea exactly what the timing is, but we do know that the  
9 Senate voted on Judge Nathan. So some new district judge  
10 is going to be coming in.

11 MR. WENNER: Your Honor, we actually -- it's  
12 important, I think, to all the parties to know. Has a  
13 determination been made whether the case will stay? We  
14 understand it to be within Judge Nathan's discretion  
15 whether to keep the matter when she's elevated. Has that  
16 decision been made, to your knowledge or --

17 THE COURT: I don't know.

18 MR. WENNER: So we may find out sometime in the  
19 near future whether it's been referred to another judge or  
20 not.

21 THE COURT: Correct, yes. I don't have any  
22 information on that.

23 MR. WENNER: We will certainly confer with  
24 opposing counsel and consider ourselves the referral of  
25 this motion to your Honor. And I agree that that would

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2 likely help with the expediency with which we think that it  
3 should be resolved.

4 There are a couple of issues on the outstanding  
5 discovery that I would like to just raise. I don't  
6 anticipate that much, if any, of this would actually  
7 require a ruling from your Honor now. The parties have  
8 been in active discussion. The Kalsom Kam deposition, I've  
9 been trying to think of ways to push that forward in light  
10 of his departure from Malaysia. As you know, we've  
11 requested the transcripts from -- the only known transcript  
12 we have from the deposition of Kim, which is in the divorce  
13 proceeding. That's, in our view, squarely within the  
14 control of Mr. Sater and should be produced. We don't --

15 THE COURT: But in the divorce proceeding, I  
16 assume -- I assume that there's going to be information  
17 that's covered in that transcript that has no bearing on  
18 this case.

19 MR. WENNER: That may be. That may be. But I  
20 don't think it's -- I think it's clearly going to be, at  
21 the very least, a mix, because we anticipate there is --

22 THE COURT: What information would he testify  
23 about in the divorce hearing that would be relevant to this  
24 case?

25 MR. WENNER: That -- if you look at the docket in

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2 the divorce proceeding, they've been proceeding for a  
3 couple of years on active discovery. And the ownership of  
4 Litco and the control of that asset --

5 THE COURT: I see.

6 MR. WENNER: -- we expect is the relevance of his  
7 deposition to that proceeding. I don't know what else may  
8 have been discussed, but I expect counsel will review and  
9 will have a process of discussing whether the -- redactions  
10 need to be made or whether the protective order is  
11 sufficient. I just don't think it's ripe yet to make those  
12 arguments.

13 MR. SNYDER: Can I just very quickly --

14 THE COURT: Sure.

15 MR. SNYDER: -- on the point of Kalsom Kam's  
16 transcript, Felix Sater does not have a copy of it. I have  
17 asked opposing counsel in the divorce case for a copy.  
18 When I get it, I'll review it. And, to your point, I  
19 expect likewise that there's going to be a lot of stuff  
20 that's not relevant. But until I see it, I can't really  
21 speak to that.

22 THE COURT: Okay.

23 MR. WENNER: The other step that I thought would  
24 be a good incremental step to secure his testimony was to  
25 request the Court order to compel him to comply with the

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2 subpoenas. That we could communicate to him that it's not  
3 just compliance with subpoenas; he's now under court order,  
4 which if he returns to the United States, he would be  
5 within the jurisdiction again to enforce it, but also it  
6 may give him the necessary motivation to, for example, sit  
7 for the deposition via Zoom from Malaysia or -- I'm just  
8 trying to think of the -- before I start putting this fault  
9 on Mr. Sater, which we alluded to in our letter, that he  
10 was within their control and knew of his whereabouts, I  
11 think there's still additional steps. I can give it a try  
12 and persuade Mr. Kam that it's in his best interest to  
13 comply with the subpoenas.

14 THE COURT: And does Malaysia allow someone to sit  
15 for a deposition in Malaysia where it's being -- you know,  
16 for purposes of an American litigation?

17 MR. WENNER: To be frank, your Honor, I haven't  
18 looked at what conventions or local rules apply in  
19 Malaysia. And I'll do that. And it raises the prospect of  
20 a court order with opposing counsel, and I don't know yet  
21 if it would be on consent or not. But that's the step I'm  
22 thinking of. And I would write a letter to your Honor with  
23 a proposal for a court order. I think it's something, you  
24 know, I think would be an appropriate response to his  
25 noncompliance with the subpoena at this time.

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2                   THE COURT: It would only be enforceable if he was  
3 within 100 miles of this court, this district.

4                   MR. WENNER: Yes, your Honor.

5                   THE COURT: Well, if you want to propose a form of  
6 court order with a letter with whatever legal support you  
7 would have for issuance of such an order, you can do that.

8                   MR. WENNER: Thank you, your Honor.

9                   There's a representation in Mr. Snyder's letter  
10 about an adequate search that Mr. Sater's purportedly done  
11 for additional documents responsive to our demands --

12                  THE COURT: And I guess particularly the tape  
13 recordings?

14                  MR. WENNER: In particular, tape recordings; but  
15 also other records that he testified about that may have  
16 been papers and other hard drives and audio recordings that  
17 were on storage devices elsewhere. In his deposition he  
18 explained that he had brought one hard drive with him to  
19 Guyana, and that was -- that one device was the basis for  
20 his search and production at the time in this case. We  
21 don't think the representation in Mr. Snyder's letter is  
22 sufficient. We expect that that was communicated to him by  
23 Mr. Sater. We think we will need to hear in more detail,  
24 possibly from Mr. Sater, the steps that he did to actually  
25 search that. Whether counsel searched the storage unit or

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2 looked at those materials, we don't know. We just don't  
3 think it's -- the information we have now satisfies what  
4 would be required to comply with the disclosure demands.

5 THE COURT: Okay, but you do have to have a basis  
6 for -- a factual basis to support discovery on discovery,  
7 essentially, and a factual basis for believing that an  
8 adequate search wasn't conducted. What factual basis is  
9 that?

10

10 MR. WENNER: And that would be in his own  
11 deposition testimony where he explained what these contexts  
12 were, what was located there, his failure to go search for  
13 them, and also his representation that no one else would be  
14 able to go into it, his employees in Guyana. So there is a  
15 factual basis that I can proffer that, at least at the time  
16 of his deposition, there was substantial reason to believe  
17 the search was inadequate. All we have in response so far  
18 is just one statement from Mr. Snyder, who wasn't part of  
19 that process to begin with -- it was his prior counsel. So  
20 I just wanted to flag that I don't think we're done yet  
21 with that issue.

22

THE COURT: Okay.

23

23 MR. SNYDER: And that's fine, and I'm happy to  
24 discuss that, meet and confer on that point with  
25 Mr. Wenner.

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2 THE COURT: Well, as I understand it, Mr. Sater  
3 would like to find the recordings, as well.

4 MR. SNYDER: Absolutely. I wish I had them.

5 THE COURT: Okay.

6 MR. WENNER: Your Honor, one point. I just want  
7 to be clear that emails that we have with the document  
8 vendor -- I'm sorry -- with the third-party vendor who  
9 enhanced the tapes and with Moses & Singer, they  
10 demonstrate that these were tapes that were in possession  
11 of both those third parties.

12 THE COURT: Of Moses & Singer, as well?

13 MR. WENNER: And the vendor, which I've obtained  
14 them from.

15 THE COURT: I thought Moses & Singer said they  
16 didn't have --

17 MR. WENNER: Well, they did not have --

18 THE COURT: -- copies.

19 MR. WENNER: They do not have them presently. But  
20 they did have them at one time.

21 THE COURT: At one point in time. Okay.

22 MR. SNYDER: Were those the tapes with Arcanum and  
23 Boies Schiller, or were they the ones with Ilyas Khrapunov?

24 MR. WENNER: Ilyas Khrapunov, your Honor.

25 MR. SNYDER: Okay.

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2 MR. WENNER: Based on the timing of the  
3 communications, if my recollection is correct.

4 THE COURT: Okay.

5 MR. WENNER: One minor point, the Litco  
6 arbitration is not stayed; it's suspended indefinitely.  
7 And the lifting of the suspension, as Mr. Snyder said, is  
8 contingent upon him paying the fees.

9 THE COURT: What's owed in it?

10 MR. WENNER: The amount? I don't know, your  
11 Honor.

12 THE COURT: In the arbitration?

13 MR. WENNER: In the --

14 THE COURT: I assume you're splitting the cost of  
15 the arbitration?

16 MR. WENNER: Splitting costs and --

17 THE COURT: And it's AAA, right?

18 MR. WENNER: Yes, your Honor. Respondents have  
19 paid their side, their share.

20 THE COURT: Okay.

21 MR. WENNER: The last point, your Honor, I think  
22 that we would raise today, because other things are in the  
23 process of meet-and-confer. We mentioned MeM Energy's  
24 responses to our document demands. We heard from counsel  
25 today before the hearing that they expect to get us early

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2 next week their further detail on hit reports and volume of  
3 documents and the production estimation. That's okay with  
4 us if the 90 days is granted; we'll work within it. If  
5 it's not, we think we should still be entitled to pursue  
6 those pending document requests. We also wanted to get  
7 those documents before we deposed MeM. So, in our view, if  
8 the Court denies the discovery extensions generally, we  
9 should still be entitled to further get the documents  
10 responsive to our existing demands and depose MeM outside  
11 the discovery period.

12 THE COURT: Okay. Does MeM Energy want to weigh  
13 in on this?

14 MR. CYRULNIK: Good afternoon, your Honor. We  
15 have no objection. There's no attempt here to try and run  
16 out a clock. We're engaging in good faith and have been.  
17 We had a communication last week regarding collection of  
18 the limited documents that we're going to collect and  
19 produce. There are hit reports that we're expecting next  
20 week, and we have no objection, to the extent your Honor  
21 did not extend discovery, to permitting whatever discovery  
22 is ultimately permitted to occur after the deadline.

23 THE COURT: All right, I'm inclined to extend  
24 discovery for 90 days but only as to the discovery that's  
25 contemplated with respect to the existing claims in the

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2 case. Depending on the outcome of the motion to amend,  
3 then we can address what additional schedule might be  
4 needed. So discovery is only extended, again, for the  
5 existing claims and for the existing discovery that's  
6 contemplated. I'm not extending it for purposes of  
7 expanding and sending out new requests, things that haven't  
8 been discussed by either party already yet.

9 MR. SNYDER: Your Honor, I do intend, unless your  
10 Honor tells me I can't, to serve a subpoena on Arcanum,  
11 which would be relevant to the new claims but also to the  
12 issue of release and claims and defenses that are already  
13 in play within the case. So I just want to flag that  
14 that's my intent.

15 THE COURT: The release agreement was signed --  
16 what information does Arcanum have on the release? That's  
17 what I'm wondering because the defense in this case goes to  
18 the existing plaintiffs having released the claims in that  
19 agreement. As far as I'm aware, the only person at Arcanum  
20 who was involved in any of these agreements is dead. So  
21 what -- and there's already been testimony from somebody  
22 from Arcanum, who really didn't have any information about  
23 the formation of the agreement, because he was asked about  
24 it. And there's testimony, which you may have seen  
25 already. So I'm just wondering what the purpose of a

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2 subpoena on Arcanum would be. I don't know what additional  
3 information you would get based on what's already been  
4 exchanged and testified to.

5 MR. SNYDER: So, your Honor, the narrative that's  
6 been put forth so far is that they were working with Litco,  
7 they started in 2015, 2016, 2017, 2018. And then October  
8 2018, oh, my God, who knew Felix Sater was the owner of  
9 Litco, this is terrible. We didn't know who the owner was;  
10 but, of all people, it can't be Felix Sater. And so we're  
11 going to terminate the agreement, and it's over. Now --

12 THE COURT: But your client testified he purposely  
13 kept it a secret.

14 MR. SNYDER: Probably not very well, because, you  
15 know, Felix Sater went to numerous meetings with Arcanum,  
16 with Boies Schiller, with other professionals that were  
17 involved in the process of trying to hunt down the Ablyasov  
18 money. They -- you know, he was certainly well beyond what  
19 a witness would be. But --

20 THE COURT: But his lawyer also testified that  
21 this was a secret and intended to be a secret.

22 MR. SNYDER: Perhaps --

23 THE COURT: And that he approached Arcanum, not  
24 the other way around. That was testified to.

25 MR. SNYDER: Yes, yes. And, you know, perhaps it

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2 was a --

3 THE COURT: By your client.

4 MR. SNYDER: -- target of -- perhaps it was  
5 opportunistic. I don't know, perhaps they --6 MR. WENNER: Sorry, your Honor, that's not  
7 precisely correct. Felix Sater approached through counsel  
8 Latham & Watkins, who was working on (indiscernible) in  
9 California at the time on other matters. And Latham  
10 directed Robert Wolf, Felix's counsel at the time, to Boies  
11 Schiller and to Arcanum.

12 THE COURT: Okay.

13 MR. SNYDER: So coming back around to the point  
14 of, you know, why do I want to subpoena Arcanum, if --  
15 okay, so we just found out a new piece of information,  
16 Judge. We just found out that Arcanum was putting together  
17 information about Felix Sater at least, you know, no later  
18 than the middle of 2017 -- and it may have been earlier --  
19 because the FBI interview was September of 2017 -- so  
20 sometime before 2017. They obviously did quite an  
21 investigation into Mr. Sater and all sorts of different  
22 things. That indicates to me, your Honor, that there is an  
23 investigation file that nobody's seen.24 Now, why is that relevant? Well, Arcanum has been  
25 Kazakhstan, BTA, Almaty, they have been --

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2                   THE COURT: Let me stop you right now. I'm not  
3 going to allow any subpoena of Arcanum right now.  
4 That's -- this is getting -- there's too much overlap with  
5 your counterclaims, and I'm not extending discovery for  
6 that. So the answer is no to subpoenaing Arcanum.

7                   MR. SNYDER: Your Honor, I must ask you to  
8 reconsider that --

9                   THE COURT: I'm not going to reconsider that.  
10 I'll take the motion under consideration, and we'll address  
11 it based on the outcome of the motion.

12                  MR. SNYDER: Okay, but, your Honor, even if you  
13 deny motion to, you know, add the counterclaims, I still do  
14 want the opportunity to argue to you that they are relevant  
15 to the core claim, as well. I understand that they kind of  
16 touch upon both. But, you know, I'd like to get my hands  
17 on that PowerPoint, and I'd like to see what else there is  
18 because --

19                  THE COURT: Why is that not a fishing expedition?

20                  MR. SNYDER: Well, it --

21                  THE COURT: That has nothing to do with what these  
22 plaintiffs knew when -- there's been extensive testimony by  
23 your own client and by his former lawyer about what  
24 happened with that agreement. And there was nothing that  
25 prevented Mr. Sater from subpoenaing Arcanum during the

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2 three years that this case has been pending. So, no, I'm  
3 not going to permit that subpoena.

4 MR. SNYDER: Okay, very well, your Honor.

5 MR. CYRULNIK: Your Honor, just one point of  
6 clarification. I don't know that your Honor intended to  
7 cover this, but, obviously, MeM Energy has not filed an  
8 answer because it's filed a motion to dismiss.

9 THE COURT: Yes.

10 MR. CYRULNIK: Obviously, to the extent that MeM  
11 Energy remains in the case, which we're hoping they don't,  
12 but if they do, we'd obviously need to serve some discovery  
13 on whatever defense we would assert in connection with our  
14 answer, but --

15 THE COURT: Have you already spoken with  
16 plaintiffs about what documents you're seeking?

17 MR. CYRULNIK: We have, but we haven't asserted  
18 our affirmative defenses yet. We didn't want to -- we  
19 thought it would be inefficient to be seeking discovery  
20 with respect to issues that are not in the case yet and if  
21 we don't feel -- if we don't end up getting --

22 THE COURT: And you've exchanged information  
23 informally, as I understand it?

24 MR. CYRULNIK: Yes.

25 THE COURT: In an attempt to try to get to a

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2 resolution?

3 MR. CYRULNIK: There were extensive efforts to get  
4 to a resolution between -- before I got involved -- between  
5 my client, before he was represented, and plaintiffs. And  
6 I think they got close but not close enough.

7 THE COURT: So I'm going to give you two weeks to  
8 evaluate what discovery that you need in connection with  
9 the claims against your client and its defenses. I want  
10 you to discuss that with plaintiffs' counsel. And I want  
11 to remind you of Rule 34, which requires you to narrowly  
12 and precisely tailor what you need. Okay?

13 MR. CYRULNIK: So your Honor's preference would be  
14 for us to serve the discovery after conferring before  
15 there's a resolution on the motion to dismiss or --

16 THE COURT: Yes, yes, before there's a resolution  
17 on the motion to dismiss, you should go -- discovery's not  
18 stayed, so --

19 MR. CYRULNIK: I understand that. I'm just saying  
20 with respect to affirmative defenses that have not been  
21 asserted in the case. But that's -- if your Honor's  
22 preference is to do that, I'm happy to do it that way.

23 THE COURT: Yes, I think that you should do that.

24 MR. CYRULNIK: Thank you.

25 THE COURT: Okay. Anything further from

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2 plaintiffs?

3 MR. WENNER: No, your Honor. Thank you.

4 THE COURT: Anything further, Mr. Snyder, for your  
5 clients?

6 MR. SNYDER: No, your Honor. Thank you very much.

7 THE COURT: Okay. And, lastly, for MeM, anything  
8 further?

9 MR. CYRULNIK: No, your Honor. Thank you.

10 THE COURT: Okay. Thank you, everybody. Nice to  
11 see you. And we can address any outstanding discovery  
12 issues at -- we have another conference scheduled for  
13 April, so -- where there's going to be oral argument on the  
14 motion to dismiss. Okay. Great. Thank you. See you  
15 then.

16 (Whereupon, the matter is recessed.)

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3                   C E R T I F I C A T E  
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5                   I, Carole Ludwig, certify that the foregoing  
6 transcript of proceedings in the case of City of Almaty,  
7 Kazakhstan et al v. Sater et al, Docket #19-cv-02645-AJN-  
8 KHP, was prepared using digital transcription software and  
9 is a true and accurate record of the proceedings.

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Signature Carole Ludwig

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Carole Ludwig

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Date: March 28, 2022

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